

### **REMARKS**

The Office Action mailed March 9, 2007 has been carefully considered.

Claims 1-17 are pending and stand rejected.

Claims 1, 5, 10, and 14 have been amended.

### **Rejection of the Claims under 35 USC 103**

The Examiner has rejected claims 1-17 under 35 USC 103(a) as being unpatentable over Sicola (USPPA 2004/0064639) in view of Choquier (USP no. 6,961,681), which are the same references recited in the prior Office Action in rejecting the claims. In reply to the applicant's arguments the Examiner states that Choquier is relied upon to teach the feature not taught by Sicola (i.e. using a failure protocol for determining an order in which said software agents are designated to take over the data transfer operation in response to one or more data transfer commands when a failure of one or more of said software agents is determined.). The Examiner further notes that with regard to the applicant arguments regarding the combination of Sicola and Choquier fails to disclose that the order of the selection of failover servers is further depending upon the selected server being within the communication path of the data transfer, "there is no mention of a selected server in the claims and also ... that Sicola ... does teach wherein the failover software agents exist with a communication path (see Sicola Figure 2 and paragraphs [0049]-[0051]."

Applicant respectfully disagrees with the reason for rejecting the claims for the same arguments made in applicant's response to the rejection of the claims in the prior Office Action. However, in the interest of advancing the prosecution of this matter, the independent claims have been amended to recite that "said primary software agent further represents a failover software agent for another primary software agent in another one of said data storage systems. No new

matter has been added. Support for the amendment may be found at least on page 67, lines 15-20, which state “Each DRM Server can have the role of primary and failover server just not in the same server group. For example Server A may be the primary server in Server Group 1, and the failover server in Server Group 2, but Server A could not be the primary and failover server in the same group.

Sicola teaches a data replication system having a redundant configuration including dual Fibre Channel fabric links interconnecting each of the components of two data storage sites, wherein each site comprises a host computer and associated data storage array, with redundant array controllers and adapters. (see Abstract). Sicola further teaches, in Fig. 6B and paragraph [0069] -[0070] the manner in which selection of a failover server is chosen. More specifically, Sicola teaches that a heartbeat pinging system is applied between the servers to determine which of the servers is active (see box 640, 643 and 645). And further teaches that when both servers are not determined to be active, the backup server performs the controller failover operation (see box 647, 650, and 655).

In rejecting the claims, the Examiner notes that Sicola does not explicitly teach a failure protocol for determining an order [in which said software agents are designated to take over the data transfer operation in response to one or more data transfer commands when a failure of one or more of said software agents is determined, as is recited in the claims]. (See OA, page 3.)

Choquier teaches an architecture including a topology manger for managing applications across a plurality of members for defining a plurality of resources comprising the applications. The architecture may also include a replication system for deploying the application to the members. (see Abstract).

However, even if the teachings of Sicola and Choquier were combined, the combined device fails to disclose that a primary server in one storage system may also be selected as a failover server in another storage system.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

Applicant believes that the teachings of Sicola and Choquier fails to describe all the elements claimed and that a *prima facie* case of obviousness has not been made. Accordingly, the invention recited in the aforementioned claims is not rendered obvious by the teachings of the cited references.

In view of the foregoing, the applicant believes that the reason for the rejection has been overcome.

Applicant respectfully submits that the claim 1 is in condition for allowance and respectfully request favorable reconsideration.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected for the same reason used in rejecting claim 1.

Thus, for the amendments made to these claims, which are similar to those made in claim 1 and for the remarks made in response to the rejection of claim 1, which are also applicable in response to the rejection of the remaining independent claims, and reasserted, as if in full, herein, it is submitted that the reason for rejecting these claims has been overcome and the rejection can

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no longer be sustained. It is respectfully requested that the rejection be withdrawn and the claims allowed.

With regard the remaining claims these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

Accordingly, it is respectfully requested that the rejection be withdrawn and the claims allowed.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at (914) 798 8505.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: \_\_\_\_\_

6/11/07



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